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DEPARTMENT OF DEFENSE

Department of the Army, U.S. Army Corps of Engineers

Notice of Availability of Supplemental Information Report for Berryessa Creek Element, Coyote and Berryessa Creek, Flood Control Project, Santa Clara County, CA

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DOD.

ACTION: Public Notice.

SUMMARY: The U.S. Army Corps of Engineers (Corps) has prepared a Supplemental Information Report (SIR) to provide an update to the General Re-evaluation Report/Environmental Impact Statement (GRR/EIS) for the Berryessa Creek Element of the Coyote and Berryessa Creek, California, Flood Control Project (Project), that the Corps may be invoking the Clean Water Act (CWA) § 404(r) exemption. The Project initially sought to obtain a water quality certification from the Regional Water Quality Control Board, San Francisco Region (RWQCB) pursuant to the CWA § 401(a) (401 Certification). During the course of extensive coordination over the last six months, the RWQCB has stated that it may be unable or unwilling to issue a 401 Certification for the Project. Therefore, in an effort to preserve the ability to improve flood risk

management in this area without excessive delay, the Corps may invoke 404(r) exemption in lieu of obtaining a 401 Certification from the RWQCB.

FOR FURTHER INFORMATION CONTACT: Amanda Cruz, U.S. Army Corps of Engineers, San Francisco District, Plan Formulation Section, 1455 Market Street, 17th Floor, San Francisco, CA 94103-1398, (415) 503-6955, *Amanda.b.cruz@usace.army.mil*.

SUPPLEMENTARY INFORMATION: The March 2014 Final GRR/EIS of the Project, and its accompanying CWA § 404(b)(1) alternatives analysis, recommended the proposed design of a earthen trapezoidal channel section with varying bottom width and 2H:1V side slopes that provides protection against the one-percent annual chance exceedance flood event from I-680 in San Jose to Calaveras Boulevard in Milpitas (hereinafter “Project”). These environmental analyses determined the Project to be the National Economic Development Plan (NED), the National Environmental Policy Act (NEPA) environmentally preferable alternative, the California Environmental Quality Act (CEQA) § 15126.6(e)(2) environmentally superior alternative, and the CWA § 404 Least Environmental Damaging Practicable Alternative (LEDPA). The Corps’ Director of Civil Works signed the Record of Decision (ROD) on May 29, 2014.

With the goal of promoting partnership, it has been the Corps’ position to obtain 401 Certification for all its projects, regardless of the availability of 404(r) exemption. However, if the RWQCB is unable or unwilling to provide such a certification then the Corps will initiate 404(r) exemption procedures and

acknowledge this in the appropriate NEPA document, which has been determined to be an SIR.

Section 404(r) creates an exemption from the water quality certification requirement under Section 401(a) for projects (1) specifically authorized by Congress for which (2) an environmental impact statement has been created that (3) includes consideration of the 404(b)(1) guidelines, which (4) has been transmitted to Congress prior to the appropriation of construction funds. Congress authorized construction of the Project in the Water Resources Development Act of 1990, Pub.L.No. 101-640, §101(a)(5), 103 Stat. 4604 (1990) and as stated above, the Corps completed the GRR/EIS in March 2014. The 404(b)(1) Alternatives Analysis was included in the GRR/EIS as Appendix A: Part V. With the completion of this SIR, the Corps will officially transmit the updated GRR/EIS to Congress prior to the appropriation of construction funding. Once done, the Corps will have met all the requirements to utilize 404(r) exemption.

The Corps is confident that the Project is fully conforming to all Federal and State laws, regulations, and requirements. In the absence of RWQCB issuing a 401 Certification, the Corps may use 404(r) exemption. In light of the fact that the Project meets all requirements of 404(r) exemption without any modifications, there are no substantial changes or new significant circumstances or information that would trigger the need for a supplement to the GRR/EIS, as defined in section 1502.9(c) of the CEQ Regulations.

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